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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,166	01/09/2004	Scott R. Watterson	13914.911	7519

22913 7590 08/09/2006

WORKMAN NYDEGGER  
(F/K/A WORKMAN NYDEGGER & SEELEY)  
60 EAST SOUTH TEMPLE  
1000 EAGLE GATE TOWER  
SALT LAKE CITY, UT 84111

EXAMINER
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CHHABRA, ARUN S

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/754,166

Applicant(s)

WATTERSON ET AL.

Examiner

Arun S. Chhabra

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/28/2004</u> .   | 6) <input type="checkbox"/> Other: ____                                     |

## **DETAILED ACTION**

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

Claims 3, 33 and 35 are objected to because of the following informalities: In claim 3, line, the phrase "wherein console is configured" should be "wherein the console is configured". In claim 33, line 2, the phrase "an upward direction is the heights" should be "an upward direction if the height". In claim 35, line 2, the phrase "console needed" should be "console is needed". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 – 36 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: how and where

the height sensor is used and how it relates to the invention at all, since the applicant is claiming a "self-adjusting" treadmill. Claim sounds incomplete.

Claims 11-36 are driven towards a self-adjusting treadmill, however in the claims, no mention of an entire treadmill that adjusts is present. Rather, applicant directs the invention to the console and its moveable nature. Thus, applicant is advised changing the preamble to "treadmill" or "self-adjusting treadmill console" in order to meet 35 U.S.C. 112 2<sup>nd</sup> paragraph requirements. In its present nature, it is unclear what applicant is directing their invention towards: either a moveable console on a treadmill or a treadmill that adjusts. Thus, examiner is unable to appropriately search and examine claims 11-36, however is able to give some insight regarding possible prior art. Appropriate correction is required.

Claim 32 recites the limitation "the current height position" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 40 recites the limitation "the an initial height" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 11-14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu (US Patent Number 4,708,337) in view of Sargeant et al. (US Patent Number 4,976,424).

Shyu discloses an automatic treadmill having a frame 11, a treadbase 12 coupled to the frame for a user to exercise on and a console 3. The height of the console appears to be adjustable via knobs 32 and track 31 but no specific mention of the reference numbers or height adjustability is made in the disclosure of Shyu.

Thus, Shyu discloses the claimed invention except for the height adjustability of the console. Sargeant teaches that it is known to use a manually height adjustable console as set forth by reference number 152, 160 and 162 in Figure 2 and in column 17, line 58-65. The console rests on and is coupled to support members 150, 157 and 159 and interacts with them via slot 160 and flange 162 to move the console in a uniform and consistent manner to a desired height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the automatic treadmill as taught by Shyu, with a height adjustable console as taught by Sargeant, since such a modification would provide the automatic treadmill with a height adjustable console, which is known in the art to be employed on physical training and exercise equipment.

Claims 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu in view of Sargeant as applied to claim 1 above, and further in view of Sakyo et al. (US Patent Number 6,450,284).

Shyu and Sargeant disclose the claimed invention except for the console automatically adjusting based on user parameters. Sakyo teaches that it is known to have an automatically adjustable console as set forth in column 3, lines 14-21, column 8, lines 32-42 and column 10, lines 30-41 to provide a console adjustment based on user's position so that a console can always be easily accessible without a user having to move it by themselves. The console of Sakyo changes based on horizontal or vertical movement by a user and also changes based on different user body types such as height. The console is configured so that its height changes when a new user sits on a seat and when the seat is moved according to the user's needs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the automatic treadmill as taught by Shyu and Sargeant, with an automatically moveable console as taught by Sakyo, since such a modification would provide the standing treadmill system with an automatically adjustable console for adjusting based on user parameters. Though the console of Sakyo is used on a chair, since the position automatically changes when a user first sits on the chair or moves around on the chair, the console can just as easily be applied to a treadbase because applicant's console is configured to change based when a user first stands or steps on a treadbase.

In regards to claims 9 and 10, it is commonly known in the art for there to be indicia on a treadmill and for that indicia to have a plurality of lights. Furthermore, if treadmills exist that indicate the height or slope of the treadbase, it would be obvious to one having ordinary skill in the art to have a reading for the height of the console if that were to be a feature of the invention. Thus, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to modify the automatic treadmill as taught by Shyu and Sargeant, to incorporate a reading that signals the height of the console, since it was known in the art that consoles are used to provide indications or readings of other treadmill characteristics, including treadbase height.

Claims 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyu in view of Sargeant and further in view of Sakyo.

Shyu and Sargeant disclose the claimed invention except for the console assembly being motorized. Sakyo teaches that it is known to use a motorized console assembly as set forth in column 3, lines 14-21, column 8, lines 32-42 and column 10, lines 30-41 to automatically adjust the console based on a user. The motorized console of Sakyo is height adjustable and is able to read a user's height on a seat and change its configuration accordingly. The initial height of the console when a user enters the cab is based on the preset adjustments of the last user who was using the console in terms of their height, width, etc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the automatic treadmill as taught by Shyu and Sargeant, with a motorized console as taught by Sakyo, since such a modification would provide the treadmill with a motorized console so that the console could be automatically adjusted to a user's body type.

***Allowable Subject Matter***

Claims 28-36 contain some allowable subject matter and appear to be allowable if rewritten to combine all the elements of claims 28-36 into one claim and if rewritten to

overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Though claims 11-36 have been rendered indefinite and unable to be examined by Examiner, a search was still performed regarding the patentability of certain features and pertinent references are as follows.

Regarding claims 15-18, Chiu (US Patent Number 6,163,541) in Figures 4 and 5 and in column 3, lines 22-42 discloses a console that is able to move vertically via a rack 68 and 70. The console includes at least one gear 66 which engages and slides up or down the rack to change the height of the console. US 5,771,152 to Crompton et al. discloses a console which changes its height via the use of a plurality of gears 17a and 17b.


Concerning claims 21-27, US 6,135,924 to Gibbs et al. discloses a treadmill where an infrared light signal is emitted via an emitter 20 and detected back via detector 22 as described in column 2, line 57 – column 3, line 25. The light signal detects the user by sending a signal and capturing the reflection of that signal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Chhabra whose telephone number is 571-272-7330. The examiner can normally be reached on M-F 9:30-6.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
STEPHEN R. CROW  
PRIMARY EXAMINER  
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